

1                   **BEFORE THE POLLUTION CONTROL HEARINGS BOARD**  
2                   **STATE OF WASHINGTON**

3   **QUALICAST FOUNDRY, INC.. )**  
4                                    **Appellant, )**           **PCHB NO. 92-186**  
5                                    **v. )**  
6   **STATE OF WASHINGTON, )**           **FINAL FINDINGS OF FACT,**  
7                                    **Respondent. )**           **CONCLUSIONS OF LAW**  
8                                    **AND ORDER**  
9                                    **DEPARTMENT OF ECOLOGY, )**  
10                                    **Respondent. )**  
11                                    **Respondent. )**  
12                                    **Respondent. )**  
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27                                    **Respondent. )**

9           The Pollution Control Hearings Board ("Board") held the hearing on this matter on  
10 May 17, 1993 in Lacey, Washington. The Board was comprised of: Robert V. Jensen,  
11 presiding; Harold S. Zimmerman, Chairman; and Richard C. Kelley, member. Appellant,  
12 Qualicast Foundry, Inc. ("Qualicast") appeared pro se through Bruce Roberts, President. The  
13 Department of Ecology ("Ecology"), respondent, was represented by Rebecca Vandergriff,  
14 Assistant Attorney General. Louise M. Becker, affiliated with Gene S. Barker and Associates  
15 of Olympia, recorded the proceedings.

16           The Board heard testimony of sworn witnesses, reviewed all the exhibits and listened to  
17 opening statements and closing arguments of the parties. Based thereon, the Board makes  
18 these:

19                                   **FINDINGS OF FACT**

20                                   **I**

21           Qualicast applied for a National Pollution Discharge Elimination System ("NPDES")  
22 permit from Ecology, on May 16, 1991. Qualicast listed its Standard Industrial Classification  
23 ("SIC") as 3325, which is the category for steel foundries engaged primarily in the  
24 manufacture of steel castings.

25                                   **FINAL FINDINGS OF FACT,**  
26                                   **CONCLUSIONS OF LAW AND ORDER**  
27                                   **PCHB NO. 92-186**

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## II

Qualicast, typical of such operations, uses a quench tank. The steel casting process is dry, except for discharge from the quench tank in a flow-through water bath. The quenching process takes place subsequent to a heat treatment operation, which follows the casting operation. This process is typical of metal molding and casting foundries inventoried nationally by the Environmental Protection Agency ("EPA").

## III

Qualicast discharges, in addition to the quench tank wastewater, non-contact cooling water, compressor condensate wastewater and stormwater to a roadside ditch. The quench tank contributes the following categories of effluents to the waters of the state: copper, lead, zinc, oil and grease, and total suspended solids. These discharges are controlled by limitations contained in the NPDES permit issued to Qualicast, effective June 25, 1992.

## IV

Ecology, in January 1992, amended its permit fees for wastewater discharge. The annual fee for iron and steel foundries, for fiscal year 1993, is \$11,350.00.

## V

There is one other foundry in the state which uses a quench tank operation. It is located in Tacoma, and is subject to the same annual permit fees as Qualicast.

## V

Ecology sent to Mr. Roberts, on June 30, 1992, a letter explaining the permit fee program. The letter informed Qualicast that it could apply for fee reductions, as a small business. Ecology never received a response to this invitation. Qualicast has 77 employees and grosses over \$500,000.00 per year.

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VI

Subsequently, Qualicast filed an administrative appeal with Ecology, of the permit fee determination. That appeal was based on the contention that Qualicast was not properly categorized as a foundry for fee purposes, and that the fee was excessive. Ecology denied that appeal in a written decision, dated: September 21, 1992.

VII

Qualicast has plans to recycle quench water, which currently is being discharged under the NPDES permit, through installation of a recycling system by June 1, 1993. This would enable Qualicast to qualify for a new permit fee category, and, within one month of approval, establishment of a new annual permit fee by Ecology.

VIII

The waste discharge permit fees are based upon the amount of money that is biennially appropriated by the legislature to Ecology for administering the program. Ecology reviews its annual permit fee regulation every two years to adjust its fees to the appropriations. The next amendment will occur in January 1994. The first set of public workshops on alterations to the current regulation, will commence the end of May of this year.

IX

Any Conclusion of Law deemed to be a Finding of Fact is hereby adopted as such.  
From these Findings of Fact, the Board issues these:

CONCLUSIONS OF LAW

I

RCW 90.48.465 authorizes Ecology to establish annual permit fees for waste discharge permits. That law provides broad latitude to Ecology in setting fees, to ensure that the fees cover, but do not exceed the expenses incurred in administering the program.

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## II

The law requires that the fees be based on "factors relating to the complexity of permit issuance and compliance". Id.; WAC 173-224-015.

## III

The statute does not require a relationship between the fee charged and the amount of discharge. RCW 90.48.465. Ecology, in its regulations, has chosen to set fees in some instances, by the type of activity. Examples of these, in addition to foundries, include: aluminum forming, aquaculture, ink formulation and printing, inorganic chemicals manufacturing, paper mills and timber products. WAC 173-224-040. In other situations, Ecology has based the fee on incremental units, such as: gallons per day of discharge. Examples of these are: combined industrial waste treatment, food processing, metal finishing, and noncontact cooling water. Id. Qualicast contends that its fees should fall in the latter grouping

## IV

We disagree. Qualicast's operation utilizes a quench tank operation, which is typical of steel casting operations used by foundries. Qualicast does not deny that it is a foundry, but rather asserts that it uses multiple processes, some of which have no impact on its discharge. This argument is without merit. The quench tank operation requires special effluent limitations, because it introduces various metals into the effluent that enters the waters of the state. Ecology acted within its authority and reasonably when it categorized Qualicast as a steel foundry, for the purposes of the annual permit fee.

## V

RCW 90.48.465(4), requires Ecology to consider the economic impact of fees on small dischargers. In response to this requirement, Ecology has adopted a process to allow small

1 businesses to apply for and obtain a reduction in their permit fee, provided that they meet  
2 certain criteria.

## 3 VI

4 A small business, in order to qualify for a reduction must, among other things, show  
5 that the business has: 1) fifty or fewer employees; and 2) annual sales of \$500,000.00 or less  
6 of the goods produced using the processes regulated by the waste discharge permit process. If  
7 these criteria are satisfied, the business may qualify for a fifty percent reduction, or \$250.00  
8 (whichever is less) of its annual fee. WAC 173-224-090(1). In addition, if the business can  
9 demonstrate that even with the reduction, the business will suffer an extreme economic  
10 hardship due to the annual fee, the business may be able to qualify for a further reduction.  
11 The total fee, in any event, can not be reduced to less than one percent of the average annual  
12 gross sales of the goods or services produced through the process regulated by the waste  
13 discharge permit.

## 14 VII

15 The evidence submitted to the Board is insufficient to support a conclusion that  
16 Qualicast qualifies for the reductions provided under the regulation. Because Qualicast has  
17 never, however, sought a reduction as a small business, it would not be foreclosed from  
18 making a future application for such a reduction to Ecology.

## 19 VIII

20 We conclude that WAC 173-224-090 is consistent with the statutory authority granted  
21 Ecology under RCW 90.48.465. This conclusion does not mean, however, that this is the  
22 only way that Ecology could ensure the consideration of the economic impact of its annual  
23 permit fees on small dischargers. An additional way, might be to attempt to universally relate  
24 the fees to the size of, or pollution contained in the discharge. We recognize, however, that if  
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1 Ecology determines to reduce certain fees based on these or other factors, other fees must be  
2 increased, in order to insure that the fees cover the cost of administration of the program.  
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4 IX

5 Any Finding of Fact deemed to be a Conclusion of Law is hereby adopted as such.  
6 From the foregoing, the Board issues this:  
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27 FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER  
PCHB NO. 92-186

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ORDER

Ecology's decision to assess an annual waste discharge permit fee on Qualicast of \$11,350.00, for fiscal year 1993, and its decision to not alter that fee, upon Qualicast's administrative appeal, are affirmed.

DONE this 27<sup>th</sup> day of May, 1993.

POLLUTION CONTROL HEARINGS BOARD

  
ROBERT V. JENSEN, Presiding

  
HAROLD S. ZIMMERMAN, Chairman

  
RICHARD C. KELLEY, Member